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09/917,536	07/27/2001	Sean James Martin	GB920010042US1	2124

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EXAMINER	
BLAIR, DOUGLAS B	

ART UNIT	PAPER NUMBER
2142	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/917,536	MARTIN ET AL.	
	Examiner	Art Unit	
	DOUGLAS B. BLAIR	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 January 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-56* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-56* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date. _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

Claims 1-56 are currently pending. Claims 1, 21, 41, and 54-56 have been amended.

Response to Arguments

Applicant's arguments filed 1/18/2008 have been fully considered but they are not persuasive.

The applicant makes the following argument with respect to the independent claims:

> With regard to the 35 U.S.C. § 103(a) rejection over Agrawal in view of Bondarenko and Rumsewicz, Applicants assert that the cited references do not teach each and every feature of the claimed invention. For example, with respect to independent claims 1, 21, and 55 and similarly claimed in claims 41, 54 and 56, Applicants submit that the cited references fail to teach or suggest, *inter alia,* determining whether the access level for said scarce resource is at a desired maximum, the desired maximum indicating a predetermined maximum number of users that it is desired be accessing the scarce resource. The Office equates the feature as previously claimed with no socket being available without specifying how the unavailability is calculated. In contrast, the claimed invention includes "... determining whether the access level for said scarce resource is at a desired maximum, the desired maximum indicating a predetermined maximum number of users that it is desired be accessing the scarce resource." Claim 1. As such, the desired maximum of the claimed invention is not a generic unavailability of sockets as in Agrawal, but rather a predetermined number of users that it is desired be accessing the scarce resource. Thus, the determining as included in the claimed invention is not taught or suggested by the unavailable socket of the cited references. Neither Bondarenko nor Rumsewicz cures this deficiency. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

The applicant's remarks with respect to the independent claims are not persuasive for two reasons. First, the applicant's specification does not provide any limiting definition of what a "desired maximum" comprises. Therefore the number of available sockets supplied as taught by Agrawal reads on the applicant's broadly claimed desired maximum. Second, the available number of sockets made available by Agrawal is a predetermined represents a predetermined number of users desired to be accessing the resource. Setting the number of sockets directly corresponds to the number of users that may use the resource in Agrawal.

On 4/3/2008, the Examiner and Hunter Webb discussed a proposed Examiner's Amendment to specify that the desired maximum is less than the total capacity of the resource. However, careful review of Agrawal shows that Agrawal teaches this feature. For example, col. 3, line 58-col. 4, line 11 discusses how the number of sockets provided at any time by Agrawal is less than the system capacity in order to allow the server to handle a burst of requests. Given the applicant's non-limiting description of the claimed "desired maximum", the proposed amendment would not be patentable over Agrawal.

With respect to claims 20 and 40, col. 3, col. 3, line 58-col. 4, line 11 of Agrawal teaches the features as currently claimed. Specifically, the ability of Agrawal to respond to bursts is considered to be the claimed accommodate immediate access to a resource when the resource is otherwise operating at a desired maximum. The applicant's claims 20 and 40 do not specify how the applicant's invention treats a late requester any differently than any other requester. In other words, the claims may use the term "late requester" but there is nothing in the claim that states that the applicant's invention specifically identifies "late requesters" as opposed to all other requesters. If the applicant were to specify that the applicant's invention specifically identifies late requests in order to treat them differently than all other requesters, then the Examiner will agree that such a claim would be patentable over the prior art of record.

The current office action has been made Non-final because of the newly added rejection of claims 21-40 and 54-56 based on 35 USC section 101. The Examiner would be glad to look at any proposed amendments that incorporate the Examiner's suggestions to overcome the prior art before the applicant files a formal response.

Claim Objections

Claims 1, 21, 41, and 54-56 are objected to because of the following informalities: the amended portion of these claims that includes the words "desired be" should read "desired to be". Appropriate correction is required.

Claims 21, 41, and 54 are objected to because of the following informalities: there needs to be an article before the first word of these claims. Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 21-40 and 54-56 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 21-40 and 54 are directed towards an apparatus that is comprised of means for performing tasks. The applicant's specification does not identify any hardware that would correspond to the claimed means so they can only be interpreted as software. An apparatus comprised only of software is treated as software per se and therefore does not fit into a statutory category of invention. Claims 55-56 are directed towards computer programs. Computer programs are software per se and do not fit into a statutory category of invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-15, 19-35, and 39-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,606,661 to Agrawal et al. in view of U.S. Patent Number 6,389,028 to Bondarenko et al. and U.S. Patent Number 6,832,255 to Rumsewicz et al.

As to claim 1, Agrawal teaches a method for regulating access by users to a scarce resource, said resource being capable of handling multiple concurrent accesses, the method comprising the steps of: receiving a request for access to the scarce resource (col. 3, lines 6-10); determining whether the access level for said scarce resource is at a desired maximum (col. 3, lines 6-10), the desired maximum including a predetermined number of user that is desired to be accessing the scarce resource (col. 3, line 8-col. 4, line 11, the claim does not specify how the predetermined number is chosen, therefore the number of access slots taught by Agrawal reads on the claimed predetermined number); responsive to determining that said access level is at desired maximum, placing said requester in a queue for access to said scarce resource (col. 3, lines 6-10); and access being available to said requester upon reaching the head of the queue and said access level dropping below said desired maximum (col. 3, lines 11-26); however Agrawal does not explicitly teach providing the requester with a notification that the request has been enqueued or having a user remain enqueued while navigating an application used access the scarce resource away from the scarce resource.

Bondarenko teaches providing a requester with a notification that the request has been enqueued (col. 7, line 20-col. 8, line 11).

Rumsewicz teaches a method of regulating access to a scarce resource comprising having a user remain enqueued while navigating an application used access the scarce resource away from the scarce resource (col. 5, lines 33-45 discussing queueing a request and col. 9, lines 3-11 discuss how admission control is performed with a cookie just like the invention disclosed by the applicant).

It would have been obvious to one of ordinary skill in the Computer Networking art at the time of the invention to combine the teachings of Agrawal regarding the queueing of a request with the teachings of Bondarenko regarding providing notification to a requester about queue positioning because providing a notification gives a user an idea of when a resource will be available (Bondarenko, col. 3, lines 43-52). It would have been obvious to combine the teachings of the Agrawal-Bondarenko combination regarding a method for queueing requests with the teachings of Rumsewicz regarding the use of a cookie for keeping track of a user because a cookie allows the system to keep track of the different clients that may try to frequently access the system (Rumsewicz , col. 8, lines 20-26).

As to claim 2, Bondarenko teaches a method of periodically providing a requester with updates on said requester's progress through the queue (col. 9, lines 18-54).

As to claim 3 and 4, Bondarenko teaches a method of issuing said request with a numbered ticket denoting said requester's position in the queue wherein the number is displayed to the requester (col. 9, lines 18-54).

As to claim 5, Bondarenko teaches a method of periodically providing the requester with updates on said requester's progress by informing said requester of the ticket number of the last user grated access to said scarce resource (col. 9, lines 18-54).

As to claim 6, Bondarenko teaches a method of calculating the average time taken to service the holder of each ticket number; and providing said requester with an estimated time to wait based on the calculated average (col. 9, lines 18-54).

As to claim 7, Bondarenko teaches a method of periodically providing the requester with updates responsive to the requester polling for such updates (col. 7, lines 36-54).

As to claim 8, Bondarenko teaches a method of downloading onto a requester's computer an executable program for initiating polling (col. 10, lines 1-32).

As to claim 9, Bondarenko teaches a method of storing information on said requester's position in the queue and information for the purpose of providing the requester with notifications said positional information being continually updated as said requester progresses through the queue (col. 9, lines 18-54).

As to claim 10, Bondarenko teaches a method of initiating updates to the requester on said requester's progress through the queue (col. 9, lines 18-54).

As to claim 11, Bondarenko teaches a method of providing a requester with notification when the access to the scarce resource is available (col. 9, lines 18-54).

As to claim 12, Bondarenko teaches a method where storing a request is responsive to determining that a requester is within a predetermined threshold of the head of the queue (col. 10, lines 49-65).

As to claim 13, Rumsewicz teaches a method of providing a requester with an update on the requester's progress through the queue responsive to a requester re-requesting access to a resource (col. 8, lines 1-26).

As to claim 14, Bondarenko teaches a method wherein watch re-quest presents a ticket number issued to the requester upon being placed in said queue, said method further comprising the step of: using said presented ticket number to determine whether access is available to said requester; and responsive to determining that access is available, granting said access (col. 9, lines 18-54).

As to claim 15, Bondarenko teaches a method wherein the step of granting access comprises: diverting said requester to a first server hosting said scarce resource (col. 9, lines 18-54).

As to claim 19, Rumsewicz teaches a method wherein the step of determining whether said access level for said scarce resource is at a desired maximum comprises: tracking the number of users currently accessing the scarce resource; and computing said number with a predetermined maximum value (col. 4, lines 45-col. 5, line 5).

As to claim 20, Bondarenko teaches a method comprising the steps of: receiving a late request for access to said scarce resource form said requester having missed access when available; determining whether sad scarce resource is able to accommodate access by said late requester; responsive to determining that it is possible to accommodate access, by said requester, granting access to said requester; and responsive to determining that it is not possible to accommodate access by said requester, re-queueing said requester (col. 9, lines 18-54, the claims do not specify how a the applicant's invention identifies a late requester as opposed to any other requester).

Claims 16-18 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,606,661 to Agrawal et al. in view of U.S. Patent Number 6,389,028 to Bondarenko et al. in view of U.S. Patent Number 6,011,537 to Slotznick.

As to claims 16-18, the Agrawal-Bondarenko combination does not explicitly teach diverting a request to a second server and providing the requester with entertainment while the resource is not available.

Slotznick teaches diverting a request to a second server and providing the requester with entertainment while the resource is not available (col. 24, line 9-49).

It would have been obvious to one of ordinary skill in the Computer Netowrking art at the time of the invention to combine the teachings of the Agrawal-Bondarenko combination regarding queueing requests with the teachings of Slotznick regarding the provision of entertainment to a waiting user because entertainment reduces the perceived wait time (Slotznick, col. 1, line 60-col. 2, line 11).

As to claims 21-56, they rejected for the same reasons as claims 1-20.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent Number 7,269,637 shows a method for using a predetermined number for determining whether or not provide access to a resource.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOUGLAS B. BLAIR whose telephone number is (571)272-3893. The examiner can normally be reached on 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Douglas B Blair/
Primary Examiner, Art Unit 2142